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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,933	07/26/2002	Kari Seppala	06267.0086	4688
22852	7590	07/21/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			FLYNN, AMANDA R	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/070,933	Applicant(s) SEPPALA, KARI	
	Examiner Amanda R. Flynn	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,3,4 and 9-14 is/are rejected.
 7) ☒ Claim(s) 5-8 and 15 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 13 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-4, 9-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,447,151 to Bruna et al.

Bruna et al. disclose a powder inhaler comprising a powder container (202), an air channel (84) through which air can be drawn via a mouthpiece (3), and a metering member (81). The metering member extends into the interior of the powder container and is in the form of an axially movable rod, equipped with a dosing recess (204). The metering member is movable between a filling position in which the dosing recess can be filled with powder, and an inhalation position, in which the dosing recess can be brought directly into the air channel, wherein a stream of inhaled air can discharge a dose of powder directly from the dosing recess. Bruna et al. show actuating means (2) for displacement of the metering member between the filling and the inhalation position. The actuating means include a depressible device cover to which the metering rod is connected. Bruna et al. also disclose a closure element (85) adapted to plug the air channel around the metering member in a substantially water-proof manner, so as to protect the air channel around the metering member from exhalation moisture when the metering member is in the filling position, and to open the air channel when the metering member is in the inhalation position. See column 14, lines 18-35. The shoulder that abuts the closure member (85)

Art Unit: 3743

constitutes a "first sealing means" to secure the substantially waterproof plugging of the air channel by the closure element.

Regarding claims 1 and 4, and as seen in the Figures, the actuating means (2) communicates or is connected with the closure element (85), via the mechanical linkage of the pusher (2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruna et al. in view of WO 90/02576 to Blower et al.

Bruna et al. disclose a powder inhaler comprising an inhaler body. Bruna et al. do not specify a second sealing means for providing substantially waterproof sealing between the actuating means and the inhaler body, while allowing movement of the actuating means in relation to the inhaler body.

Blower et al. disclose an inhalation device as shown in Figure 4, comprising sealing means (19) that provide a substantially waterproof seal between the inhaler body and the actuating means (15), to protect the device from the moisture of a user's breath.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device as disclosed by Bruna et al. with a second sealing means between the

Art Unit: 3743

actuator (2) and the inhaler body (1), as taught by Blower et al., to protect the device from the moisture in a user's breath.

Although Blower et al. do not expressly disclose that the seal (19) comprises corrugated walls, at the time the invention was made, it would have been obvious to one skilled in the art to modify the inhaler disclosed by Bruna et al. in view of Blower et al., to include a seal comprising corrugated walls. Applicant has not disclosed that the corrugated walls provide an advantage over an elastic seal, is used for a particular purpose or solves a stated problem. One with ordinary skill in the art would have expected Applicant's invention to perform equally well with an elastic seal as taught by Blower et al., since such a seal is equally capable of allowing relative movement between the inhaler body and the actuating means, while providing a substantially waterproof seal.

Allowable Subject Matter

5. Claims 5-8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 19 May 2004 have been fully considered but they are not persuasive.

On pages 4-5 of Applicant's remarks, Applicant argues that the actuating means disclosed by Bruna does not communicate or connect with the closure element.

The examiner disagrees. The claim requires that the actuating means "communicates or is connected" with the closure element. As most broadly considered, the actuating means (2) is

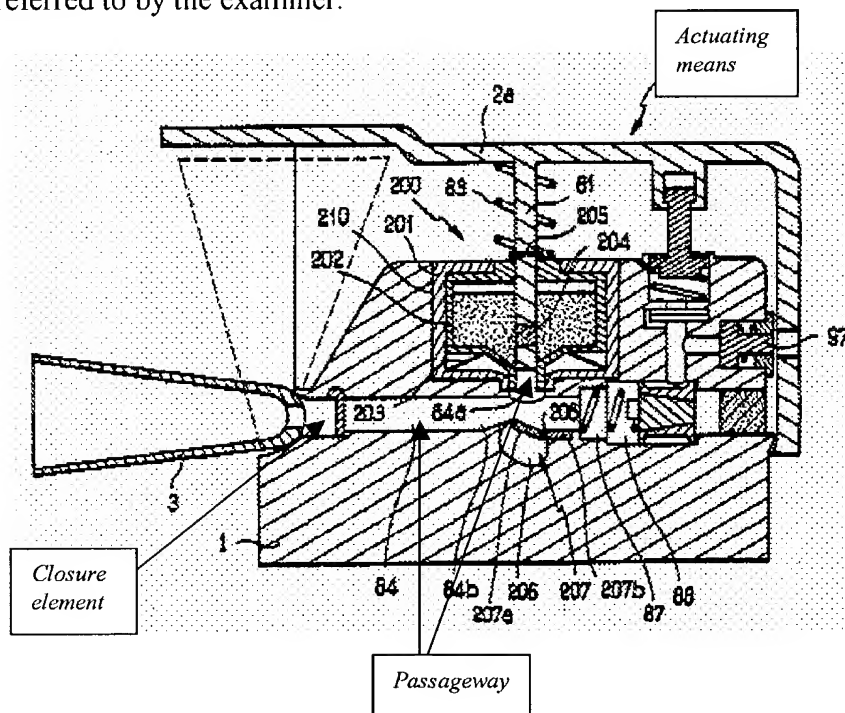
Art Unit: 3743

considered to “communicate” with the closure element (85), via the passageway connecting the two. Specifically, the actuating means and closure element “communicate” through the passageway, which is in direct physical contact with both the actuating means and the closure element.

The examiner is partially relying upon Applicant’s own broad recitation of Applicant’s interpretation of the relation between the two elements. Turning to page 3 of the specification, the description reads, “The terms ‘communicate’ and ‘connected’ mean herein communicating or being connected either directly or indirectly via another element” (emphasis added).

Therefore, the examiner maintains the position that the actuating means are in communication with the closure element, via the passageway linking the two, wherein the passageway is in direct physical contact with both the actuating means and the closure element.

The following marked-up Figure is provided to further elucidate the “communication” being referred to by the examiner.



Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda R. Flynn whose telephone number is 703-306-4056. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

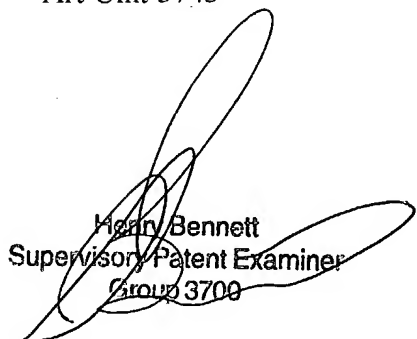
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amanda R. Flynn
Examiner
Art Unit 3743

arf


Henry Bennett
Supervisory Patent Examiner
Group 3700